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Draft report

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Chapter I
Matters calling for action by the Economic and Social Council or brought to its attention

B. Matters brought to the attention of the Economic and Social Council

Follow-up summary report and recommendations of the mission of the Permanent Forum to the Plurinational State of Bolivia

1. On 21 April 2010, the Permanent Forum on Indigenous Issues held an in-depth dialogue on the situation of the indigenous peoples in the Chaco region with representatives of the Government of the Plurinational State of Bolivia, leaders of the Guaraní People's Assembly (APG) and representatives of the United Nations country team in the Plurinational State of Bolivia. This dialogue represents a new working method based on the report on the Forum's mission to the Plurinational State of Bolivia (E/C.19/2010/6) and the response submitted by the Government of the Plurinational State of Bolivia (E/C.19/2010/12/Add.1). The Permanent Forum thanked the representatives of the Government, indigenous peoples and the United Nations for their participation in the dialogue.

2. The Permanent Forum asked a number of questions on various issues, including:

(a) Regulations for and conduct of the consultations regarding hydrocarbon exploration and extraction;

(b) Functioning of the Chaco Police Command with a view to protection of the Guaraní people and to progress in the freeing of individuals, families and communities;

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(c) Activities of the Human Rights Unit of the Ministry of Labour, Employment and Social Security in jurisdictions with a Guaraní population;

(d) Activities of the Inter-ministerial Council for the Eradication of Servitude, Forced Labour and Similar Practices;

(e) Progress in community-based agrarian reform with respect to the freeing of individuals subjected to servitude or forced labour and of captive communities on haciendas, and to the recovery of community lands usurped by haciendas;

(f) Plans for the freeing of Guaraní individuals and communities following the establishment of the new judicial institutions envisaged in the Constitution;

(g) Applicability of the Penal Code to those who keep individuals and communities in conditions of forced labour or captivity;

(h) Adoption of measures for the housing and health of the freed communities pending the recovery of their lands, and thereafter;

(i) Adoption of specific measures to combat forced labour and the sexual exploitation of children and adolescents, and concerning the education and health of Guaraní children and adolescents; and

(j) Provision of legal services to individuals, families and communities, not only with a view to their freedom from servitude but also after their liberation.

Comments on the dialogue

3. The representatives of the Government of the Plurinational State of Bolivia provided further information on the constitutional framework that hinders the State policy for elimination of the servitude of indigenous people and recovery of their land in accordance with the provisions of the community-based agrarian reform, reiterating the unwavering commitment of the current Government of the Plurinational State of Bolivia to that policy. The objective includes not only the definitive freeing of Guaraní individuals and communities, but also reconstitution of the territory of the Guaraní people. The Government representatives made it clear that the new institutions referred to in the questions were still at on early stage and that the new judicial institutions envisaged in the Constitution would be established in 2011, in accordance with the Constitution's implementation schedule. Meanwhile, several important agrarian land titling cases related to the freeing of Guaraní individuals and communities are stalled before the old judicial institutions.

4. The representatives of APG, for their part, maintained that the process of eliminating forced labour and the captivity of communities was stalled owing to a lack of Government will concerning the necessary land titling and recovery policies. They stressed that that elimination would not be complete until there was a true reconstitution of the territory of the Guaraní nation. They said that the ineluctable principle governing the entire process must be self-determination and that the essential mechanism must be the prior, free and informed consent of the Guaraní people itself.

5. For its part, the representatives of the country team said that the Permanent Forum's mission report had had a positive impact. They described the initiatives and activities of the United Nations agencies and programmes aimed at implementation of the respective recommendations and explained how the country team planned to

facilitate coordination among the various parties involved in situations of servitude in the Chaco region.

6. Lastly, the representatives of the Government responded, stressing that, thanks to the new Constitution, prospects were good but that, owing to the situation that had been inherited, conditions were poor.

Recommendations

7. The Permanent Forum recommends that the Plurinational State of Bolivia should speed up implementation of the constitutional provisions regarding the freeing of individuals, families and communities in light of the fact that forced labour and servitude are serious human rights violations that must be addressed with great urgency.

8. The Permanent Forum recommends that the Plurinational State of Bolivia should consider implementing the resolutions of the National Agrarian Reform Institute regarding the revocation of land titles on grounds of servitude in all matters affecting not only the freedom of individuals, but also the recovery of land for communities, thereby preventing legal proceedings from stalling a reform process that defends, promotes and protects human rights.

9. The Permanent Forum recommends that the Plurinational State of Bolivia should continue to link its policies for the freeing of individuals and the recovery of lands in the Chaco region with a view to the territorial reconstitution of the Guaraní people, which both the Government and APG consider the ultimate objective.

10. The Permanent Forum recommends that the Plurinational State of Bolivia should adopt more rigorous special policies in the areas of housing, health and education in order to benefit the freed communities, paying particular attention to those who have been subjected to servitude, and especially children and adolescents.

11. The Permanent Forum welcomes the inclusion of the Office of the Deputy Minister for Decolonization, together with other competent institutions, in the Government's implementation of measures designed to eliminate servitude and contemporary forms of slavery. Its cooperation will ensure a broader and more comprehensive and effective strategy.

12. The Permanent Forum calls on the Office of the Attorney General and the district prosecutors' offices in the Departments of Chuquisaca, Santa Cruz and Tarija to conduct criminal investigations into the events described by the Plurinational State of Bolivia in its report to this session of the Forum and in the subsequent report of the Inter-American Commission on Human Rights.

13. The Permanent Forum encourages APG to continue to give priority to its endeavours to eliminate the servitude and contemporary forms of slavery to which families and communities in Santa Cruz, especially in Alto Parapetí, and in Chuquisaca, are subjected. The Permanent Forum encourages APG, as the organization that represents the Guaraní people in the Plurinational State of Bolivia, to continue to give priority to combating these extremely serious human rights violations as part of its broader programme of reconstitution of the Guaraní people.

14. The Permanent Forum encourages APG to continue to defend the principles of self-determination and free, prior and informed consent in accordance with the United Nations Declaration on the Rights of Indigenous Peoples, which the

Plurinational State of Bolivia has incorporated into its domestic law and applied through its Constitution.

15. The Permanent Forum thanks the country team for endorsing the recommendations contained in the report on the mission to the Plurinational State of Bolivia and for taking responsibility for follow-up to those recommendations. With regard to attempts at consensus-building among the parties involved in situations of servitude and practices of forced labour, the Permanent Forum recalls that human rights are inalienable and that they include the rights of indigenous peoples acknowledged in the United Nations Declaration.

16. The Permanent Forum urges the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the Plurinational State of Bolivia to continue and strengthen its monitoring of the human rights of the Guaraní people to address as a matter of urgency the situation of the families and communities that are subjected to forced labour and other forms of servitude and to report regularly and publicly on developments in that situation. In the area of technical assistance, the Permanent Forum urges the Office of OHCHR in the Plurinational State of Bolivia to strengthen the human rights capacities of the Guaraní authorities in Alto Parapetí and other districts where there are serious human rights violations.

17. The Permanent Forum undertakes to continue to monitor implementation of the recommendations contained in its report with the cooperation of all parties to this dialogue: the Government, the representatives of indigenous peoples and the United Nations country team.

Follow-up summary report and recommendations of the Permanent Forum mission to Paraguay

18. On 21 April 2010, the Permanent Forum on Indigenous Issues held an in-depth dialogue on the situation of indigenous peoples in the Chaco region with representatives of the Government of Paraguay, officials of the Coordinating Body for the Self-Determination of Indigenous Peoples of Paraguay (CAPI) and representatives of the United Nations country team in Paraguay. This dialogue represents a new working method based on the mission report of the Permanent Forum, which visited Paraguay in April 2009 (E/C.19/2010/5), and the Government of Paraguay's responses in its report to the ninth session of the Forum (E/C.19/2010/12/Add.2). The Permanent Forum thanked the representatives of the Government, indigenous peoples and the United Nations for their participation in the dialogue.

19. The Permanent Forum asked a number of questions on various issues, including:

(a) Respect for the principle of self-determination during the ongoing reform of the Paraguayan Institute for Indigenous Affairs (INDI) and other agencies with competence on indigenous issues, such as the Ethnic Rights Department of the Public Prosecutor's Office;

(b) Potential recovery of the lands of indigenous communities that were usurped by the current owners, who acquired them without the need for a purchase contract or through forced expropriation;

(c) Potential use of the rural land registry for purposes of land titling and recovery of community land without placing a prohibitive burden on the public coffers;

(d) Activities of the Inter-ministerial Council for the Eradication of Servitude, Forced Labour and Similar Practices;

(e) The work of the Inter-Agency Commission for the Enforcement of Judgments of the Inter-American Court of Human Rights and the Recommendations of the Inter-American Commission on Human Rights;

(f) Coordination between the national programme for indigenous peoples (PRONAPI) and INDI and the work of PRONAPI;

(g) The work of the Commission on Labour Rights and the Prevention of Forced Labour under its plan of action to combat forced labour;

(h) Participation of indigenous peoples in INDI and in the new bodies mentioned above;

(i) Fulfilment by the Public Prosecutor's Office of its constitutional mandate to defend the rights of indigenous peoples, especially in connection with the specific provisions of the Code of Criminal Procedure on "punishable acts relating to indigenous peoples";

(j) Concrete action by the political, administrative and judicial authorities of the Chaco region aimed at combating forced labour and ensuring the recovery of community land;

(k) Specific measures taken in order to protect indigenous children in the indigenous communities of the Chaco region under the current conditions; and

(l) Potential development of coordinated international policies, particularly with the Plurinational State of Bolivia, with a view to the freeing of individuals and the recovery of indigenous peoples' land in the joint Chaco region.

Comments on the dialogue

20. The representative of the Government of Paraguay provided further information on the constitutional guarantees of private property that are hindering the development of land titling policies with a view to freeing individuals and rebuilding communities. In any event, he believed that the impending creation of a rural land registry could provide an opportunity for such titling. He spoke about the work of the new institutions, which is still at an early stage, and particularly that of the Commission responsible for implementing, at last, the resolutions of the Inter-American Court of Human Rights concerning the indigenous communities of the Chaco region. He stressed the failure of Congress to cooperate in the development of an indigenous land recovery policy and the problems that this posed for the Government.

21. The representative of CAPI, for his part, acknowledged the effort that the Government was making to promote policies for the recognition and compensation of the indigenous peoples of Paraguay. He stressed the persistence of servitude, forced labour, violation of the right to organize, dispossession of land and property, lack of access to health services and, in many communities, genuine humanitarian crises. The representative of CAPI recalled that in addition to the Guarani, there

were other indigenous peoples in the Chaco region, such as the Ayoreo, some of whom were living in voluntary isolation. He said that the Government of Paraguay and CAPI were cooperating in the development of new policies. CAPI urged the Government to seek ways to compel the legislative and judicial branches to implement such policies. CAPI thanked the United Nations agencies with offices in Paraguay, and particularly the United Nations Development Programme (UNDP), for their assistance and support.

22. The representatives of the country team praised the Permanent Forum's mission and subsequent report and expressed their appreciation for the reception of the report by the Government and the indigenous peoples' organizations. They described the initiatives and activities of the United Nations agencies and programmes aimed at implementation of the respective recommendations and the problems that had been encountered.

23. Lastly, the representative of the Government offered further detailed and valuable information on the political commitment of the current executive branch and on the various kinds of problems that it was addressing resolutely.

Recommendations

24. The Permanent Forum recommends that the Government of Paraguay should remain firm in its commitment to cooperating with indigenous peoples' organizations in order to find emergency solutions to the extremely serious situation of the indigenous communities that have been wholly dispossessed of their land, and to implement policies to ensure the reconstitution of their territory.

25. The Permanent Forum urges the Republic of Paraguay to take urgent action to implement the resolutions of the Inter-American Court of Human Rights concerning communities that are experiencing major humanitarian crises.

26. The Permanent Forum recommends that Paraguay should speed up the reform of INDI and of other institutions with competence in indigenous issues so that the proper participation of indigenous peoples will strengthen their democratic representation before the legislative and judicial powers, which are still reluctant to act.

27. The Permanent Forum recommends that the Government of Paraguay should make resolute progress towards the development of a land registry that will facilitate land titling, and thus the recovery of land by indigenous communities and the territorial reconstitution of their respective peoples.

28. The Permanent Forum welcomes the announcement of a flagship plan for the acquisition of additional indigenous land in order to overcome the financial crisis faced by INDI and the failure of Congress to cooperate by allocating the necessary funds.

29. The Permanent Forum recommends that the Government of Paraguay should give priority, in its emergency plans, to the protection of vulnerable indigenous children from practices of forced labour and other forms of exploitation.

30. The Permanent Forum encourages the Government of Paraguay to continue to accept assistance from United Nations agencies and programmes and national cooperation agencies in order to develop policies aimed at the elimination of forced

labour and other forms of servitude, especially in matters relating to the most urgent challenges: food, health, housing and education.

31. The Permanent Forum notes that forced labour and all forms of servitude constitute serious human rights violations that it is urgent to address; it therefore urges the Government of Paraguay to combat these practices as a matter of urgency.

32. The Permanent Forum recommends that those responsible for practices of forced labour or other forms of servitude should be prosecuted under Paraguayan law.

33. The Permanent Forum recommends that Paraguay should propose the negotiation of international agreements for protection of the rights of indigenous peoples with the other States of the Chaco region — the Plurinational State of Bolivia, Argentina and Brazil — and particularly with the Plurinational State of Bolivia with a view to the latter's development of additional policies aimed at the freeing of individuals, the recovery of land and the rebuilding of peoples.

34. The Permanent Forum recommends that any future agreements with the Plurinational State of Bolivia should provide, in particular, for means of protecting the territory of the Ayoreo people living in voluntary isolation.

35. The Permanent Forum encourages CAPI and other indigenous peoples' organizations to continue to defend the principle of indigenous peoples' self-determination that they have followed in asserting their own identity, and thus to continue their efforts to reach agreement with the Government on reforms consistent with the Declaration on the Rights of Indigenous Peoples.

36. The Permanent Forum thanks the country team for endorsing the recommendations contained in the report on the mission to Paraguay and for taking responsibility for follow-up to and implementation of those recommendations in cooperation with indigenous peoples' organizations.

37. The Permanent Forum undertakes to continue to monitor implementation of the recommendations contained in its report with the cooperation of all parties to this dialogue: the Government, the representatives of indigenous peoples and the United Nations country team.